

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KALI KANONGATAA,

Plaintiff,

- against -

COX MEDIA GROUP, LLC, COX RADIO, INC. and
COX COMMUNICATIONS, INC.

Defendants.

Docket No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Kali Kanongataa (“Kali” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendants Cox Media Group, LLC (“Cox Media”), Cox Radio, Inc. (“Cox Radio”), Cox Communications, Inc. (“Cox Communications” and together with Cox Media and Cox Radio “Defendants”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendants unauthorized reproduction and public display of a copyrighted photograph of Plaintiff’s newborn baby, owned and registered by Kali, on approximately eight-five websites owned and operated by Defendants. Accordingly, Kali seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendants because Defendants resides in and/or are transacting business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

1. Kali is the owner of the Polynesia Cultural Exchange which is a non-profit organization that helps those of Pacific Islander decent utilize their talents with leaders in creating avenues to educate, promote, and advance cultural competency. Kali has a place of business at 1495 Silver Avenue, San Francisco, California 94134.

2. Upon information and belief, Cox Media is a limited liability company duly organized and existing under the laws of the State of Delaware with a place of business at 555 Sunrise Highway, Babylon, New York, 11704. Upon information and belief, Cox Radio is a corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 555 Sunrise Highway, Babylon, New York, 11704. At all times material hereto, Cox Media and Cox Radio has owned and operated websites at the URL's: www.journal-news.com, www.hot105fm.com, www.b985.com, www.thenew93q.com, www.wgauradio.com, www.daytondailynews.com, www.krmg.com, www.springfieldnewssun.com, www.mymagic949.com, www.wsbradio.com, www.wokv.com, www.1037chuckfm.com, www.Y100fm.com, www.houstonseagle.com, www.countrylegends971.com, www.myhot995.com, www.k923orlando.com, www.97xonline.com, www.wbli.com, www.wduv.com, www.easy1065.com, www.kiss104fm.com, www.kissrocks.com, www.magic1021.com, www.wbab.com, www.magic1053.com, www.hits97.3.com, www.kono1011.com, www.gocarolinas.com, www.kkyx.com, www.yourgeorgiacountry.com, www.969theeagle.com, www.wedr.com,

www.1037chuckfm.com, www.1033theeagle.com, www.icflorida.com, www.X1071atlanta.com, www.wape.com, www.X1029.com, www.accessatlanta.com, www.dayton.com, www.myajc.com, www.ajc.com, www.news965.com, www.mystatesman.com, www.austin360.com, www.mydaytondailynews.com, http://www.kiro7.com, www.PalmBeachPost.com, www.wsoctv.com and numerous others (the “Websites”).

3. Upon information and belief, Cox Communications is a corporation duly organized and existing under the laws of the State of Delaware with a place of business at 555 Sunrise Highway, Babylon, New York, 11704. At all times material hereto, Cox Communications has owned and operated the website www.myconnection.cox.com (“Cox Communications Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

4. Kali photographed the birth of his newborn child after he was born (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

5. Kali is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

6. The Photograph was registered with Copyright Office and was given Copyright Registration Number VA 2-024-383.

B. Defendants Infringing Activities

7. Upon information and belief, Cox Media and Cox Radio ran articles on the Websites entitled *Man livestreams son’s birth, says it was an accident*.

<http://www.fox13memphis.com/news/trending-now/man-livestreams-sons-birth-says-it-was-an-accident/294143734>

http://www.kiro7.com/news/trending-now/man-livestreams-sons-birth-says-it-was-an-accident/294156681
http://www.wpxi.com/news/national/man-livestreams-sons-birth-says-it-was-an-accident/294156875
http://www.fox25boston.com/news/man-livestreams-sons-birth-says-it-was-an-accident/294156701
http://www.journal-news.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/
http://www.hot105fm.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/
http://www.b985.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/
http://www.thenew93q.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/
http://www.wgauradio.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/
http://www.daytondailynews.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/
http://www.krmg.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/
http://www.springfieldnewssun.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/
http://www.mymagic949.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/
http://www.wsbradio.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/
http://m.wokv.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/
http://m.1037chuckfm.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/
http://m.y100fm.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/
http://www.houstonseagle.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/
http://www.countrylegends971.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/
http://www.myhot995.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/

<http://www.k923orlando.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.97xonline.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.wbli.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.wduv.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://m.easy1065.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.kiss104fm.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.kissrocks.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.magic1021.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.wbab.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.magic1053.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.hits973.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.kono1011.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.gocarolinas.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.kkyx.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.yourgeorgiacountry.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.969theeagle.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.wedr.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.1037chuckfm.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.1033theeagle.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

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<http://www.icflorida.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.x1071atlanta.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.wape.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.x1029.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.accessatlanta.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.myajc.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.ajc.com/news/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.news965.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.mystatesman.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.austin360.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.mydaytondailynews.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.wsocv.com/news/trending-now/man-livestreams-sons-birth-says-it-was-an-accident/294156871>

<http://www.wsbradio.com//news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.wftv.com/news/trending-now/man-livestreams-sons-birth-says-it-was-an-accident/294156689>

<http://www.wsbtv.com/news/trending-now/man-livestreams-sons-birth-says-it-was-an-accident/294156879>

<http://rare.us/story/it-happened-somebody-live-streamed-giving-birth-on-facebook-live/>

<http://www.fox23.com/news/trending-now/man-livestreams-sons-birth-says-it-was-an-accident/294156694>

<http://www.actionnewsjax.com/news/trending-now/man-livestreams-sons-birth-says-it-was-an-accident/294156882>

<http://faves.com/story/it-happened-somebody-live-streamed-giving-birth-on-facebook-live/>

<http://www.palmbeachpost.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.whio.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

www.mypalmbeachpost.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/

<http://www.palmbeachpost.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.power1061.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.easy93.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.star945.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.1073soloexitos.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.wmmo.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.power953.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.theboneonline.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.hot1015tampabay.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.1073theeagle.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.971theriver.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.yourgeorgiacountry.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.powerathens.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.960theref.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.mix96tulsa.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.k95tulsa.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

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<http://www.k99online.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.eagledayton.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://www.eaglesanantonio.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://tampabaychristianmusic.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

<http://todayspulse.com/news/news/national/man-livestreams-sons-birth-says-it-was-accident/nrQWF/>

8. The articles prominently featured the Photograph. A true and correct copy of the articles are attached hereto as Exhibits B, C, D and E.

9. Cox Media and Cox Radio did not license the Photograph from Plaintiff for its articles, nor did Cox Media or Cox Radio have Plaintiff's permission or consent to publish the Photograph on its Websites.

10. Upon information and belief, on or about May 31, 2016 Cox Communications ran an article on the Cox Communications Website entitled *Man livestreams son's birth, says it was an accident*. See

<http://myconnection.cox.com/article/trending/aHR0cHM6Ly9pZGVudGlmaWVycy5jbWdkaWdpdGFsLmNvbS9tZWRSZXkvcHJvZC9uZXdzLm1lZGxleXN0b3J5LzMzNDk1OTkv/>.

11. The article prominently featured the Photograph. A true and correct copy of the article is attached hereto as Exhibit F.

12. Cox Communications did not license the Photograph from Plaintiff for its article, nor did Cox Communications have Plaintiff's permission or consent to publish the Photograph on Cox Communications Website.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST COX MEDIA, COX RADIO AND
COX COMMUNICATIONS, INC.))
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Defendants infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Websites. Defendants are not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

15. The acts of Defendants complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Defendants have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by Defendants of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

18. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendants willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

19. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

20. Defendants conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendants be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendants profits, gains or advantages of any kind attributable to Defendants infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendants be required to account for all profits, income, receipts, or other benefits derived by Defendants as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
January 3, 2017

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